



August 10, 2006

NEPA Modernization (EMS-NEPA)
Attn: Associate Director for NEPA Oversight
722 Jackson Place, NW
Washington, DC 20503

Via email: horst_greczmiel@ceq.eop.gov

Re: Guide to Aligning EMS with NEPA

Dear Director Greczmiel:

On behalf of Wild South, a non-profit outdoor recreation and environmental organization, I am filing the following comments on the proposed guide on aligning Environmental Management Systems (EMS) and the National Environmental Policy Act (NEPA). Please make these comments part of the administrative record for this proposal.

WildLaw and our clients support efforts to improve efficiency in government procedures. However, this efficiency must not be achieved at the cost of the protections and public notification requirements of NEPA. We agree with the drafters of the Guide that by involving NEPA reports in the EMS, the findings of the NEPA reports can be used to constantly update the EMS and eventually the agencies will have a better idea of, for example, which mitigation and alternatives work well and which don't. This will allow them to spend less time rehashing ineffective mitigation techniques or alternatives in future NEPA documents. Thus, there will be less paperwork, and more actual results. The information will be used to not only assess environmental impacts, but also to manage them.

In order for WildLaw and our clients to fully evaluate the potential for how these two systems could function together, we will need more specific details about the proposal. And the alignment must serve to strengthen both EMS and NEPA, and not to erode them.

Some sections of the proposal need to be clarified. The proposal suggests, "it is conceivable that a well constructed EMS can include all the elements of the NEPA process and serve as the basis for complying with NEPA requirements." (Proposed Guide p. 4) Such a statement needs to be more fully explained. It is true that NEPA documents can incorporate documents created for other purposes, as long as they meet the NEPA standards including being scientifically-based and up-to-date. As long as they meet NEPA standards, any other documents can be used to satisfy NEPA. So it is unclear what is new about this suggestion.

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The proposal says that an EMS can provide numerous opportunities for communicating with the public and for providing information. (Proposed Guide p. 3) There is no explanation of what these opportunities are or any assurances that they would take place. Public notice is one of the main elements of NEPA and cannot be circumvented by a claim that another procedure is equivalent. The procedure followed must actually be equivalent.

Unacceptably, the proposal also discusses using data generated by the EMS to identify categories that normally require an EIS or a FONSI, or categorical exclusion, “under NEPA which would reduce the need to prepare EAs.” (Proposed Guide p.5) Categorical exclusions are created through the regulatory process and cannot be created by the agencies being regulated. In the absence of a regulation determining that certain actions are only subject to certain NEPA requirements, each government action must be evaluated on a case-by-case basis and be subject to all the requirements of NEPA.

Whether or not the alignment of EMS and NEPA is beneficial depends on how it is carried out. Incorporating NEPA documents and the information they contain into the overall EMS plan will result in better information and a better plan. Most of the language in the proposal talks about “incorporation” and the “complementary” points of EMS and NEPA process. There is potential for improving these two systems by aligning them.

However, if the proposal includes using EMS to replace NEPA requirements, much detail must be filled in to show how NEPA requirements would be maintained.

Thank you for the opportunity to comment on this proposal. Please notify me of any further proposals or decisions made on this issue.

Yours truly,
QuickTime™ and a
TIFF (LZW) decompressor
are needed to see this picture.

Sandra S. Nichols
Counsel for Wild South